Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1221

EDWARD FLYNN, et al.,

Petitioners,

vs.

HARRIET BAUMAN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	2
JURISDICTION	2
QUESTION PRESENTED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT:	
The Decision That The Illinois Five Year Statute Of Limitations Applies To All Claims Brought Under The Civil Rights Act Is Contrary To Principles Laid Down By This Court	5
CONCLUSION	8
APPENDICES:	
A—Memorandum Opinion and Order of the United States District Court	1a
B—Opinion of the United States Court of Appeals	3a

TABLE OF AUTHORITIES

Cases

Amen v. Crimmens, 379 F.Supp. 777 (N.D. Ill. 1974)	6
Baker v. F & F Investment Co., 489 F.2d 829 (7th Cir. 1973)	5
Beard v. Robinson, et al., No. 76-1708 (7th Cir. 1977)	5, 6
Cage v. Bitoy, 406 F.Supp. 1220 (N.D. Ill. 1976)	5
Duncan v. Nelson, 466 F.2d 939 (7th Cir. 1972), cert. denied, 409 U.S. 894 (1972)	6

Inada v. Sullivan, 523 F.2d 485 (7th Cir. 1975) 6
Johnson v. Railway Express Agency, 421 U.S. 454 (1975) 6
Jones v. Jones, 410 F.2d 365 (7th Cir. 1969) 5
Mitchell v. White Motor Co., 58 Ill.2d 159 (1974) 6
O'Sullivan v. Felix, 233 U.S. 318 (1914) 5
Skrapits v. Skala, 314 F.Supp. 510 (N.D. Ill. 1970) 5
Wakat v. Harlib, 253 F.2d 59 (7th Cir. 1958) 6

Others

United States Code, Title 42, §1983 3
Ill. Rev. Stat. 1975, Ch. 83, par. 15 ..... 3, 5, 6, 7
Ill. Rev. Stat. 1975, Ch. 83, par. 16 ..... 3, 5
Ill. Rev. Stat. 1975, Ch. 70, par. 2(c) 7
Ill. Rev. Stat. 1975, Ch. 85, par. 8-101 7

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No.

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HARRIET BAUMAN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Your Petitioners, Edward Flynn, a Chicago Police Sergeant, Richard Roe, Chief of Patrol in the Chicago Police Department, John Doe, a district commander of the Chicago Police Department, and James Conlisk, the former Superintendent of the Chicago Police Department, respectfully pray that a writ of certiorari issue to review the judgment and the opinion of the United States Court of Appeals for the Seventh Circuit, entered in this proceeding on December 2, 1977.

OPINIONS BELOW

The memorandum opinion and order of the district court in favor of defendants-petitioners, entered January 5, 1977, is unreported but is reproduced below in Appendix A.

The opinion of the Court of Appeals, filed December 2, 1977, reversing the judgment of the district court, is unreported. It is reproduced in Appendix B.

JURISDICTION

The judgment of the Court of Appeals was entered on December 2, 1977. This petition for certiorari was filed within ninety days of that date.

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether a civil rights action brought in federal court which in essence alleges false arrest, wrongful assault and false imprisonment can be controlled by the Illinois five-year statute of limitations while an action for damages in a state court on virtually the same facts would invoke the Illinois two-year statute of limitations.

STATUTES INVOLVED

United States Code

Title 42 U.S.C. §1983:

Every person who under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceedings for redress.

Illinois Revised Statutes

Chapter 83, par. 15:

Actions for damages for an injury to the person, or for false imprisonment, or malicious prosecution, or for abduction, or for seduction, or for criminal conversion, shall be commenced within two years next after the cause of action accrued.

Chapter 83, par. 16:

Except as provided in Section 2-725 of the "Uniform Commercial Code", approved July 31, 1961, as amended, actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within five years next after the cause of action accrued.

STATEMENT OF THE CASE

This case arises out of a civil rights action brought under 42 U.S.C. §1983 against defendants in which respondent sought relief from defendant police officers for actions taken by them under color of their office which allegedly violated her civil rights. Respondent's complaint filed October 6, 1976 alleged that she was wrongfully and forcibly removed from her home in Chicago, Illinois, by the defendant Flynn on June 17, 1973. Respondent's complaint alleged certain unconstitutional violations including freedom from illegal seizure of her person, freedom from illegal detention, freedom from physical abuse and timely and effective assistance of counsel.

A motion to dismiss was filed on behalf of the defendants arguing that the statute of limitations had run. The motion was granted as to those portions of respondent's complaint alleging personal injury (Appendix A). In its memorandum opinion and order the district court held that to the extent that the complaint alleged false arrest, false imprisonment, and wrongful assault it was controlled by Ill. Rev. Stat. 1973, Ch. 83, par. 15, providing for a limitations period of two years for personal injuries.

The judgment of the Court of Appeals for the Seventh Circuit (Appendix B) reversed and remanded the decision of the district court. The Court of Appeals concluded that the appropriate Illinois statute of limitation for claims brought under the civil rights act is the five-year statute of limitations applicable to "civil actions not otherwise provided for," Ill. Rev. Stat. 1973, Ch. 83, par. 16, and that therefore respondent's complaint was not time-barred.

REASONS FOR GRANTING THE WRIT

THE DECISION THAT THE ILLINOIS FIVE-YEAR STATUTE OF LIMITATIONS APPLIES TO ALL CLAIMS BROUGHT UNDER THE CIVIL RIGHTS ACT IS CONTRARY TO PRINCIPLES LAID DOWN BY THIS COURT.

Congress has not placed a limit on the time for bringing an action under the Civil Rights Act. It is well established that in the absence of a federal limitation statute, the applicable statute of the forum state which governs the closest analogous state action will control. *O'Sullivan* v. *Felix,* 233 U.S. 318 (1914).

Illinois has not enacted a statute of limitations specifically governing civil rights actions. The Illinois Limitations Act, Ill. Rev. Stat. 1973, Ch. 83, par. 15, provides for a two-year limitations for actions involving personal injuries, false imprisonment and malicious prosecution. Paragraph 16 of the Act provides a five-year limitation upon civil actions "not otherwise provided for." The Court of Appeals, relying upon its recent decision in *Beard* v. *Robinson, et al.,* No. 76-1708 (7th Cir., September 28, 1977), found that the Illinois five-year limitations period applies to statutory claims brought under the Civil Rights Act. The *Beard* Court conceded that the state of the law in this Circuit regarding the limitation period governing claims brought under the civil rights act was less than lucid.[1]

[1] *Jones* v. *Jones,* 410 F.2d 365 (7th Cir. 1969) cert. denied, 396 U.S. 1013 (1970), and its progeny, *Baker* v. *F & F Investment Co.,* 489 F.2d 829, (7th Cir. 1973); *Cage* v. *Bitoy,* 406 F.Supp. 1220 (N.D. Ill. 1976); *Skrapits* v. *Skala,* 314 F.Supp. 510 (N.D.

(footnote continued on following page)

The court decided that it was compelled to borrow the five-year Illinois statute of limitations for all claims founded on the Civil Rights Act rather than the Illinois two-year statute of limitations because of the fundamental differences between a federal civil rights action and a common law tort.

In so deciding the court of appeals ignored the decision of this Court which rejected the idea that "there is anything peculiar to a civil rights action that would justify reluctance in applying state law." *Johnson* v. *Railway Express Agency*, 421 U.S. 454, 464 (1975). Rather than engaging in an analysis of state law to determine which state limitations period is most analogous to the federal cause of action, the court of appeals has promulgated without foundation a federal imperative in favor of longer limitations periods in civil rights actions.

The law is clear in Illinois that where the cause of action arises from a direct physical injury to the person of the plaintiff, the two-year statute of limitations applies. *Mitchell* v. *White Motor Co.*, 58 Ill.2d 159, 161 (1974).

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[1] *Continued*
Ill. 1970); and other cases held that Illinois' two-year statute of limitations, Ill. Rev. Stat. 1975, Ch. 83, par. 15, applied to a cause of action under 42 U.S.C. §1983, where damages sought resulted from an injury to plaintiff's person, false imprisonment or malicious prosecution. Cases following *Wakat* v. *Harlib*, 253 F.2d 59 (7th Cir. 1958), including *Inada* v. *Sullivan*, 523 F.2d 485 (7th Cir. 1975); *Duncan* v. *Nelson*, 466 F.2d 939, 941 (7th Cir. 1972), *cert. denied*, 409 U.S. 894 (1972); and *Amen* v. *Crimmens*, 379 F. Supp. 777, 779 (N.D. Ill. 1974), held that claims brought under 42 U.S.C. §1983 are governed by Illinois' five-year statute of limitations. The *Jones* case was recently overruled in *Beard* v. *Robinson, et al.*, No. 76-1708 (September 28, 1977). No petition for certiorari to this Court was filed in *Beard*.

There can be no question in the case at bar that the alleged damage was to the person of plaintiff, and not to her realty or personalty.

Additionally, the public policy of Illinois as embodied in its statutes of limitations has uniformly stated that the limitation period for personal injuries is two years. Thus, actions for injury to the person is two years, Ill. Rev. Stat. 1975, Ch. 83, par. 15, as are actions for wrongful death, Ill. Rev. Stat. 1975, Ch. 70, par. 2(c) and actions under the Tort Immunity Act, Ill. Rev. Stat. 1975, Ch. 85, par. 8-101.

The decision of the court of appeals in holding that the five-year statute of limitations applies to all claims brought under the Civil Rights Act is in conflict with the obvious intent of the legislature to set a two-year limitation period to control actions for damages on account of or because of an injury to the person. The Illinois General Assembly has recognized that actions for personal injury are inherently different from actions based upon contract or involving injury to real or personal property. The two-year limitation period for actions involving injury to the person is designed to avoid the prosecution of fraudulent and stale claims arising after a lapse of time when evidence may be lost or obscured and witnesses become unavailable or their memories dimmed. Personal injury actions are not supported by documentation or physical evidence in the same way as contracts. Contracts can be supported by a course of dealing involving letters and invoices, customs in the business, and frequently involve physical objects.

Under this decision a person who is struck by a milkman will have two years to bring an action for damages, but if that same person is struck by a policeman and files a

civil rights action in federal court he will have five years in which to commence his suit. Virtually the same set of factual circumstances involving the same physical injury will trigger two different limitations periods with a three year disparity. Absent review by this Court it is most unlikely the courts of Illinois will have an opportunity to address this statute of limitations issue as civil rights actions are not generally brought in state courts.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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Of Counsel.

March 1, 1978

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HARRIET BAUMAN,
Plaintiff,
v.
EDWARD FLYNN, et al.,
Defendants.
No. 76 C 3724

MEMORANDUM OPINION

Defendants' motion to dismiss this civil rights complaint will be granted. Plaintiff will be given leave to amend her complaint as to the claim for deprivation of her right to counsel.

Since 42 U.S.C. §1983 provides no statute of limitations, we must look to the limitations period of the most analogous action under Illinois law. *O'Sullivan* v. *Felix,* 233 U.S. 318 (1913); *Jones* v. *Jones,* 410 F.2d 367 (7th Cir. 1969). To the extent that the complaint alleges false arrest, false imprisonment and wrongful assault, it is controlled by Ill. Rev.Stat. Ch. 83, § 15, providing for a limitations period of two years. *Jones* v. *Jones,* 410 F.2d 365 (7th Cir. 1969). This suit was filed on October 6, 1976, and is based on an incident which occurred on June 17, 1973. Therefore, these claims are barred.

(Appendix A)

Plaintiff also alleges that defendants deprived her of her right to counsel while she was in custody. Since this claim does not appear to be covered by § 15, it would fall within § 16, which has a five year limitations period. Nevertheless, we do not believe plaintiff has stated an actionable claim. She has not alleged that the deprivation of her right to counsel proximately caused her to suffer consequential damages. In the absence of such an allegation, we need not decide whether such a claim can afford the basis for relief.

Accordingly, it is ordered that defendants' motion to dismiss is granted. Plaintiff is given ten days to amend her complaint to state a claim based upon deprivation of her right to counsel. Defendants will be given ten days thereafter to plead to the amended complaint.

Dated: January 5, 1976

Enter:

/s/ John F. Grady
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

(Submitted December 1, 1977)

December 2, 1977

Before

Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. WILBUR F. PELL, JR., *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*

HARRIET BAUMAN, Plaintiff-Appellant, No. 77-1310 vs. EDWARD FLYNN, et al., Defendants-Appellees.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 76-C-3724 Judge Grady

This matter comes before the court on the "PLAINTIFF'S RESPONSE TO REQUEST OF COURT" filed herein on November 15, 1977, by counsel for the plaintiff-appellant; and the "SUPPLEMENTAL BRIEF OF APPELLEES" filed herein on November 28, 1977, by counsel for the defendants-appellees. Both documents were filed pursuant to this court's order of November 1, 1977, requesting responses from the parties regarding the applicability of *Beard* v. *Robinson,* Slip Op. No. 76-1708 (7th Cir. Sept. 28, 1977).

(Appendix B)

The district court dismissed the action brought pursuant to 42 U.S.C. § 1983 on January 5, 1977, finding that the plaintiff-appellant's suit was time-barred by the Illinois two-year statute of limitations, Ill.Rev.Stat. ch. 83, §15 (1977). In *Beard* v. *Robinson, supra,* this court recently held that the appropriate Illinois statute of limitations to be applied to claims brought under the Civil Rights Act is to be the five-year statute of limitations applicable to "civil action[s], not otherwise provided for," Ill.Rev.Stat. ch. 83, §16 (1977). A review of the record indicates that the alleged civil rights violations occurred in 1974, and that the complaint was filed in 1975.* Therefore, the plaintiff-appellant's complaint is not time-barred. Accordingly,

IT IS ORDERED that the judgment appealed from be REVERSED, and the cause is hereby REMANDED for further proceedings according to law. The clerk is directed to enter judgment accordingly.

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* It appears that through a typographical error the dates, as stated by the Court of Appeals, are incorrect. However, there is no dispute that the incident in question occurred on June 17, 1973 and suit was filed on October 6, 1976. (See the Opinion of the District Court.)